

SUNDAY
JANUARY 16, 2005

OBITUARIES B2
STEAMED! B4
VOLUNTEERS B6
MLK HOLIDAY CLOSINGS . . . B9

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The Herald-Sun

DURHAM

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Police faulted on photo lineups

A closer look at technique for identifying suspects gets two cases tossed out

BY JOHN STEVENSON

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Durham defense attorneys are focusing much attention on the way police use photo lineups to identify crime suspects.

Words like "unconstitutional," "impermissibly suggestive" and "contaminated" are being used to blast the lineups, which sometimes consist of six photos on a page. One of the six usually is the person thought to have committed a given murder, rape, robbery or other offense.

People who witnessed a crime examine the photos and attempt to pick out the culprit.

While the process might sound simple and straightforward, it has backfired at least twice in recent days.

Last week, for example, a first-degree murder charge against Kirk Orlando Smith was dismissed because of photo-lineup problems.

Smith had been accused in the September 2003 fatal shooting of 25-year-old Devondre Peace, who was gunned down on Rosedale Avenue while sitting in a minivan.

Another person in the van told police he did not see the shooter and could not identify him. Ten days later, detectives showed the man a photo lineup anyway.

At that point, the man picked out Smith, detectives contended.

But defense attorney Michael Driver later interviewed the witness and got a different story.

Driver quoted the man as saying, "I only saw an arm and a gun. I didn't see his face. I don't know who the shooter was."

So prosecutor Freda Black dropped the murder charge against Smith.

"The only eyewitness to this homicide has recanted," Black wrote in official court documents. "There is no other evidence to prove this defendant was the perpetrator."

"It disturbed me that the police could arrest somebody for murder and jail them for more than a year with no other evidence than that," Driver told The Herald-Sun. "I didn't see any evidence at all. I think it was a terrible investigation by the police, an awful investigation."

Kammie Michael, the police public relations coordinator, was away from her office Friday and could not be reached for comment. The Herald-Sun was referred instead to Cpl. David Addison, but he did not respond to messages.



BLACK